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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,274	03/27/2001	Wayne Edward Beimesch	390780	6754

7590 02/14/2008

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EXAMINER	
ROGERS, DAVID A	

ART UNIT	PAPER NUMBER
2856	

MAIL DATE	DELIVERY MODE
02/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. Responsive to the reply brief under 37 C.F.R. 41.41 filed on 27 December 2007, a supplemental Examiner's Answer is set forth below:

In their reply brief the appellant states:

> "Appellant does not understand how the Examiner has come to the conclusion that that temperature "at which VOC-containing products are manufactured or processed" is the same as the exit temperature of emission. Appellant maintains that the temperature "at which VOC-containing products are manufactured or processed" is more reasonably interpreted as the temperature inside the process system, such as that of a fluid bed dryer".

In the prior decision rendered 19 March 2004 the Board of Patent Appeals stated that the Appellant's systems, as disclosed and claimed, could be any process system (open or closed) whose temperature could be measured and that produced VOCs that can be monitored. The Appellant did not challenge the Board's decision and interpretation. Furthermore, the mean exit temperature has never been limited during prosecution or during the previous appeal to be one that existing "inside the process system". Irrespective of the lack of teaching or suggestion in the Appellant's claims it is noted to the Appellant that the prior art clearly teaches that a process system (a bed dryer) is known to be a source of VOCs. See Legros *et al.* where it is expressly stated that dryers (reference item 10) produce a material (dried particles from an injected slurry), operate at high temperatures (such as about 120 °F[1]), have

[1] The prior actions on this application suggest that the fluid bed dryer operates at 400 °F. However, this is a minor typo - Legros *et al.* teaches the mixing chamber (reference item 33) operates at 400 °F. However, the drying chamber (reference item 10) appears to operate at 120 °F (49 °C), which is within the claimed range of having an exit temperature of between 5 °C to 100 °C.

temperature measuring means; e.g., thermocouples (reference item 64) inside the dryer in order to measure the temperature inside the dryer, and are a known source of VOCs; e.g., the effluent gases from the dryer. The temperature inside the fluid bed dryer is the mean exit temperature of the emissions (the drying temperature of the slurry to produce the particles that generates VOCs). This is clearly analogous to the claims on appeal, and is clearly consistent with the terms and phrases used by the Appellant during prosecution and by the Board in their prior decision.

The Appellant argues that it has not been established that, at the time of the invention, there was a design need or a market pressure to modify the prior art "by storing the bag at temperature other than the temperature where the samples are taken". First, there is no express requirement that, in order to establish a proper rejection under 35 U.S.C. 103(a), either market forces or a design need must be established by the Office. Furthermore, the prior art of record clearly teaches that areas in a process system with high temperature are known to release VOCs (as taught by Legros *et al.*). Storing the bag at elevated temperatures; e.g., the temperature where the VOCs are being released (which is the mean exit temperature of the process system that releases VOCS), would allow one of ordinary skill to determine the quantity of VOCs actually being released, as taught by Masterton *et al.* (equilibrium is reached at any temperature, but more molecules are in the headspace at higher temperatures than at lower temperatures). The known prior art analysis systems (FIDs, for

example) are known to be used to quantify the amount of VOCs in the sample from the headspace.

Appellant may file another reply brief in compliance with 37 C.F.R. 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 C.F.R. 1.136(a) is not applicable to this two month time period. See 37 C.F.R. 41.43(b)-(c).

/David Rogers/
Examiner - Group Art Unit 2856

/Hezron Williams/

Supervisory Patent Examiner, Art Unit 2856

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below: